



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,162	05/20/2002	Nikolai Grigorievich Lyapko	PAA-102-A	4990

7590
Irving M Weiner
Weiner & Burt
635 N US 23
P O Box 186
Harrisville, MI 48740

03/12/2007

EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
----------	--------------

3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/031,162

Applicant(s)

LYAPKO, NIKOLAI
GRIGORIEVICH

Examiner

Michael Thaler

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3731

Claims 14-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choi (5,676,684) in view of Gabrusenok (SU 1264942). Choi discloses base member 15 and needles (col. 5, line 14) fixed therein, each of the needles comprising a rod member, a sharpened portion and a head (the portion of the needle adjacent to base member 15). Choi fails to disclose the needles as being partially coated with a coating. However, Gabrusenok teaches that acupuncture needles should be partially coated with coatings of a material which different than the needle material in order to obtain the advantage of creating electrochemical potentials (abstract). It would have been obvious to partially coat the Choi needles with a material which is different than the material of the needles so that it too would have this advantage. With this modification, the Choi needles would include a first set of needles (e.g. the needles on the left half of the device) being made from a first material (i.e. the material of the needle itself which is labeled 1 in Gabrusenok) and a second set of needles (e.g. the needles on the right half of the device) being coated with a second material (i.e. the material of the coating which is labeled 3 in Gabrusenok), each needle being surrounded with needles whose base materials and coatings are made from different materials (the base material of each needle is different than the coating

Art Unit: 3731

material of each needle as indicated in the Gabrusenok abstract), the first and second materials having different electrochemical properties (as indicated in the Gabrusenok abstract). As to claims 22 and 23, Choi fails to disclose the claimed materials for the needle and/or coatings. However, applicant admits that these materials are old and well known in an applicator comprising a base member and needles (page 1, line 31 to page 2, line 2 of applicant's specification) which apparently has the advantages of making the needle strong and biologically inert. It would have been obvious to use these materials for the Choi device so that it too would have these advantages.

Applicant's arguments filed Dec. 15, 2006 have been fully considered but they are not persuasive. The allegation that the Choi needle 14 does not meet the specifications of amended claim 14 is incorrect. The Choi needle 14 has a rod member (the main portion of the needle which is a rod member since the needle is thin and elongated as shown in figures) and a sharpened portion (the distal end of the needle). The distal end of the needle 14 is sharpened since 1) a needle, by definition, is sharp, 2) the distal end of the needle appears narrow in the figures, and 3) the needle punctures the skin, noting that it is described by Choi as being part of an acupuncture device. Further, the

Art Unit: 3731

allegation that the Choi needle 13A lacks a rod member is incorrect since 1) a needle, by definition, has a rod member (i.e. the main portion of the needle and 2) even if the main portion of the needle 13A is tapered, it is still a rod member since a rod member, by definition, does not have to have a constant width from one end to the other. In any event, Gabrusenok clearly discloses that a needle has a rod member and a sharpened portion.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael

Art Unit: 3731

Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731